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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report submitted by the Working Group on Arbitrary Detention

Addendum

Visit to the People's Republic of China

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Introduction

1. The Working Group on Arbitrary Detention, represented by its Chairman and Vice-Chairman (Mr. Kapil Sibal (India) and Mr. Louis Joinet (France) respectively), visited the People's Republic of China at the invitation of the Government, from 6 to 16 October 1997.

2. The visit was in follow-up to a preparatory mission of five days carried out in July 1996 by Mr. Joinet, the former Chairman of the Group, during which he met with officials, visited a prison in Beijing and a "re-education through labour" centre in Shandung province and agreed upon modalities for a future visit by the Working Group (see E/CN.4/1997/4, paras. 23-35).

3. The Working Group visited the capital, Beijing, Chengdu (Sichuan province), Lhasa (Tibet) and Shanghai. In Beijing it held talks with the Vice-President of the Supreme People's Court, the Deputy Chief Procurator at the Supreme People's Procuratorate, the Vice-Minister of Justice, the Vice-Minister for Foreign Affairs and the Director-General of the Foreign Ministry's Department of International Organizations and Conferences, with officials from the Ministry of Public Security, and with several procurators. On the occasion of a visit to a tribunal in Beijing the Working Group attended a trial and later had discussions with some of the judges. It also held discussions with lawyers from the All China Lawyers Association, the President and members of the China Society for Human Rights Studies and scholars from the Institute of Law Science at the Chinese Academy of Social Science.

4. In Chengdu the Working Group was received by representatives of the local authorities and visited the Sichuan Provincial Juvenile Delinquents Reformatory Penitentiary. In Lhasa, the Group was received by the leader of the regional People's Government. It visited a prison on the outskirts of Lhasa - Prison No. 1, known as the Drapchi prison. In Shanghai, the Group was received by the city's deputy mayor; it held talks with officials of the Investigative Branch of the Public Security organ and with the Director of the Bureau of Justice of Shanghai municipality in his capacity as Chairman of the administrative committee in charge of re-education through labour. It also held discussions with members of the Shanghai Bar Association and with members of the East China Institute of Law and Political Science. The Working Group visited, in the Shanghai Metropolitan area, the Shanghai Detention House - a pre-trial detention centre; Qingpu prison, and the Shanghai Women s Correction House - a "Re-education through Labour" administrative detention centre.

5. The visit to the People's Republic of China was made possible through the coordinated efforts of the Office of the High Commissioner for Human Rights and the Ministry of Foreign Affairs of China, and in particular the Department of International Organizations and Conferences, under the efficient and helpful direction of Mr. Wang Guangya, its Director-General, and his dedicated staff. The Working Group wishes to express its gratitude to the authorities of the Government of China, and in particular to the above-mentioned officials, for the help and cooperation extended to the Group during its visit.

General comments

6. Pursuant to the preparatory mission carried out in July 1996, the Working Group held consultations with the Chinese authorities for the finalization of a visit by the Working Group. The Chinese authorities having agreed in principle to such a visit, the Working Group started conveying to the authorities its expectations as to the modalities of the visit and the possible detention facilities that the Group might wish to visit. The Working Group conveyed to the authorities that it would like to visit a broad range of detention facilities, including a pre-trial detention centre and a centre for re-education through labour and a prison in Tibet. It would be in order to mention that on account of the difficulty in getting clearances from the Chinese Government to visit specific centres of detention and particular provinces, it was not possible to prepare an agenda for the visit in advance. Detailed programming in respect of the visit to detention centres could only be finalized after the members of the Working Group had arrived at Beijing and also in the course of the visit.

7. The Working Group would have been able better to appreciate the extent of the changes effected by the revised Criminal Procedure Law and the revised Criminal Law, in contrast to the respective 1979 Laws, if the Chinese authorities had made available to the Group a version of the revised Laws either in English or in French. Such a request was made at the first meeting of the Group with the authorities and also during the course of the visit. This handicapped to some extent the work of the Group and much of the information received and incorporated in the present report is based on the inquiries made by the Group during the visit and documents procured by the Group subsequent to the visit.

8. Though the authorities emphasized time and again that under Chinese law no one could be permitted to visit pre-trial detention centres, they must be congratulated for having waived that objection and allowing the Working Group to visit the pre-trial detention centre at Shanghai. The Working Group, throughout the course of its visit, maintained that it regarded the visit to pre-trial detention centres as falling within its mandate. The positive attitude of the authorities despite their reservations, must be seen both as a precedent and an example of the growing awareness of and cooperation with the special procedures mechanisms of the Commission on Human Rights by Member States in order to further the cause of human rights.

9. The authorities made genuine efforts to make the visit of the Working Group a success. Occasional bottlenecks were the result of a lack of flexibility on the part of either subordinate or autonomous regions' officials or authorities who found it difficult to adapt to the culture of cooperation which was experienced by the Working Group throughout the visit. The local authorities had occasionally to be persuaded to accept the requests of the Group. This sometimes required statutory or non-statutory prison authorities and/or officials to allow visits to detention centres requiring adherence to well-accepted norms regarding questioning prisoners or detainees, including conditions of privacy. At Shanghai, for example, the prison officials had to be persuaded to allow the members of the Group to conduct interviews in private. As pre-trial detention centres had no experience of such visits, the authorities were hesitant to make an exception. It did credit to the

officials who allowed themselves to be persuaded after the purpose of the visit and the non-adversarial nature of the inquiry had been explained.

10. The Group was also confronted with a similar situation at Lhasa. As most of the detainees at Drapchi were Tibetans, it was felt that the interpreters provided by the United Nations would not be able to translate from spoken Tibetan. According to the authorities, this required the use of the interpreters provided by the Tibet Autonomous Region. The Group resisted this suggestion. Ultimately, the matter was resolved, as some of those who were interviewed also spoke Mandarin whereas others were understood with the help of other inmates who spoke Mandarin and who were selected at the last minute by members of the Group.

11. As the visit progressed the Working Group on the basis of information gathered in situ, asked to meet officials and to be provided with information not requested earlier. The authorities made genuine efforts to meet the requests of the Group. The Group, for its part, understood the difficulties of the authorities when they were unable to meet the requests of the Group. As there was no arranged or agreed detailed programme provided to the Group, most of the decisions had to be taken as the visit progressed. This also reflected flexibility of attitudes on both sides.

Brief overview of the administrative organization

12. The People's Republic of China covers an area of 9,596,961 km² and in 1992 had a population estimated at nearly 1.2 billion inhabitants. It is a unitary State comprising four administrative levels: first level - 22 provinces, 5 autonomous regions (Tibet, Xinjiang, Mingxia, Guangxi, Inner Mongolia) and 3 directly governed municipalities (Beijing, Shanghai, Tianjin); second level - 148 prefectures and 191 cities; third level - 1,853 counties, 662 urban districts and 323 small cities; fourth level - 12,500 towns and 94,384 townships.

I. JUDICIAL ORGANIZATION

13. As in all legal systems, prosecuting bodies (procuratorates) are distinct from sentencing bodies (courts and tribunals). The former come under the hierarchical supervision, not of the Ministry of Justice, but of the Supreme People's Procuratorate alone, and the latter under that of the Supreme People's Court, these two bodies being completely independent of each other.

A. Organization of courts and tribunals

14. The Supreme People's Court is at the apex of the hierarchy of courts; below it there are three local levels of higher, intermediate and basic-level people's courts, and a number of special courts.

15. The Supreme People's Court comprises over 200 magistrates. It is made up of a president, several vice-presidents and a number of divisional presidents and vice-presidents and judges. Its internal organization includes special criminal, civil, economic and administrative chambers, a special chamber for transport and a chamber for petitions and complaints as well as a Standing Adjudication Committee comprising the president, divisional

presidents and a number of judges. It is managed by the administrative services (general service, judicial administration departments and personnel and a search bureau). In its areas of competence, as a court, it judges the cases assigned to it by law in first and last instance and cases which it considers require its direct jurisdiction because of their importance in terms of principle or national scope. As an appeal court, it rules on decisions handed down by lower courts. It also ensures unity of interpretation of laws, essentially through the medium of the Adjudication Committee mentioned above; similarly, it may, on request or on its own initiative, give courts advisory opinions on the interpretation of the legislation applicable, even when cases are already in progress.

16. There are three levels of local courts: higher people's courts (in each province, autonomous region or in directly administered municipalities - approximately 30); intermediate people's courts (in the prefectures - approximately 380); and basic-level people's courts (in the urban districts and rural counties - approximately 3,000). The basic-level courts also oversee the activity of the people's conciliation committees, which play an important role in the conciliation and prevention of lawsuits. If necessary, they may set up subsidiary courts. Like the Supreme People's Court, each court is divided into civil, criminal, economic and administrative chambers and has a standing committee of judges. They judge cases which by law come directly within their jurisdiction in first and final instance; the first two categories also judge appeals against decisions handed down by the courts immediately below them as well as applications for judicial review referred to them by the people's procuratorates, in accordance with the procedure known as "verification of sentences". At the administrative level, each category monitors the judicial activities of the courts below it.

17. The special people's courts have jurisdiction in certain specific sectors of activity. There are military tribunals, marine tribunals and rail transport tribunals.

18. Appointments procedures are as follows: the president of the Supreme People's Court is appointed for a five-year term which may be renewed once and/or revoked by the National People's Assembly, while the vice-presidents, divisional presidents and vice-presidents, judges and the adjudication committee are appointed and/or removed from office by the Standing Committee of the National People's Congress. The Supreme People's Court is responsible to the National People's Congress, to which it reports on its activities.

19. The presidents and judges of the three lower levels of courts are appointed and/or removed from office in accordance with an identical but decentralized procedure by the Standing Committee of the People's Congress of the judicial district concerned, to which the courts also report.

B. Organization of the people's procuratorates

20. They are organized on exactly similar lines to the local courts. The procurators are appointed and/or removed from office by the local congresses under the same conditions as judges. Each procuratorate also has a procurators' committee, which takes the most important decisions by a majority

of its members. However, if the head of the procuratorate finds himself outvoted, the matter is then submitted to the Standing Committee of the local People's Congress.

21. The jurisdiction of the procuratorates derives from their general mandate of monitoring the application of laws.

(a) They act as public prosecutors in serious criminal cases with political implications;

(b) They investigate criminal cases they receive directly;

(c) They determine the follow-up to public security investigations;

(d) They support the prosecution in ordinary criminal cases, with the exception of military affairs; and

(e) They verify the legality of sentences and their execution as well as the activities of prison establishments.

22. From the above it seems fair to conclude that criminal investigations are carried out by the Public Security Office (PSO - the police) in 90 per cent of the cases and that the People's Procuratorate investigates the remaining 10 per cent.

C. Conditions of recruitment of judges and procurators

23. According to article 9 of the Judges Act and article 10 of the Procurators Act, the new statutes impose the following conditions on access to their profession:

(a) To be a national of the People's Republic of China;

(b) To be at least 23 years of age;

(c) To uphold the Constitution of the People's Republic of China;

(d) To have good political and vocational training and a record of good conduct;

(e) To be in good health;

(f) To have a law degree or have attained a similar standard.

II. LEGISLATIVE REFORMS IN CRIMINAL MATTERS

24. Following the events commonly referred to as the "Cultural Revolution", the People's Republic of China experienced a period of legal quasi-vacuum from 1966 to 1979. The abolition of the Ministry of Justice was significantly symbolic of that period.

25. A process of modernization, timidly initiated in 1979, was expanded in the 1990s by a new series of reforms, particularly in the justice sector. The most important include:

(a) Reform of the Criminal Procedure Law (17 March 1997);

(b) Reform of the Criminal Law (14 March 1997);

(c) Administrative Procedures Law (1 November 1990);

(d) Administrative Penalties Law (March 1996);

(e) Prisons Law (29 December 1994);

(f) People's Police Law (28 February 1995);

(g) State Compensation Law (12 March 1994).

26. Reforms more directly concerning the organization and operation of justice are based on the following four fundamental texts:

(a) Section VII, article 126 of the Constitution, whereby "The people's courts exercise judicial power independently, in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual";

(b) The Judges Law and the Procurators Law, both of 28 February 1995, which came into force on 1 July 1995. Since this reform, magistrates, who formerly had the general status of public officials, acquired their own specific status. By that date there were approximately 141,000 procurators and 156,000 judges, including 23,000 women, who had judged approximately 4.5 million cases; 496,082 of them were criminal cases, 2,714,665 civil cases, 1,278,806 economic cases and 51,370 administrative cases;

(c) The Law on Advocates (15 May 1989, which came into force in January 1990), the main objective of which is to allow lawyers to practise independently (and no longer as public officials) in cooperative practices.

The legislative system and its features

27. There is no specific nomenclature or coding system allowing legal texts to be identified easily in terms of sources and order of ranking. The latter is discernible by reference to the following categories:

(a) The Constitution, adopted by the National People's Congress;

(b) Regularly ratified international treaties;

(c) Fundamental laws adopted by the National People's Congress;

(d) Laws adopted by the Standing Committee of the National People's Congress;

(e) Administrative regulations, decisions and ordinances adopted by the State Council (Government);

(f) Local regulations adopted by local people's congresses;

(g) Regulations of ministries and local governments.

28. The difficulties of access mentioned earlier are compounded by the fact that there is still no single official bulletin; the National People's Congress has its own official bulletin for laws, while administrative regulations are published in the official bulletin of the State Council and the major ministries have their own official bulletins. The texts enacted by people's congresses and local governments are registered by the Legal Department of the State Council, which takes the opportunity of ensuring that they are in accordance with the law.

29. The principle whereby, in a State subject to the rule of law, no one may be ignorant of the law, requires the law to be made public; but jurists must also have easy and comprehensive access to up-to-date legal texts. In this sense, the endeavours of the Chinese authorities to modernize the system for making laws public should be encouraged from the point of view of a State subject to the rule of law, and bilateral and multilateral technical cooperation programmes should take them fully into account.

A. The revised Criminal Law

1. The content of the reform

30. The revised Criminal Law is divided into two parts:

(a) The first part consists of five chapters. Chapter I refers to certain basic principles and the scope and application of the criminal law. Chapter II defines crimes and criminal responsibility and certain other aspects of crime. Chapter III deals with punishment in all its aspects. Chapter IV refers to the concrete application of punishments, inter alia, their reduction and suspension. Chapter V relates to other provisions;

(b) The second part relates to certain special provisions and consists of 10 chapters. Chapters I and II relate to crimes endangering national and public security, respectively. Chapter III deals with economic crimes. Chapter IV deals with crimes infringing upon the rights of the person and the democratic rights of citizens. Chapter V deals with property violations. Chapter VI deals with crimes disrupting the order of social administration. Chapter VII, VIII, IX and X refer to crimes endangering the interests of national defence, crimes of graft and bribery, crimes of dereliction of duty and crimes relating to military personnel, respectively.

31. In the context of the mandate of the Working Group, and in order to appreciate some aspects of the legal regime in the field of criminal law operative in China, some specific provisions of the law should be referred to.

32. Article 13 absolves a person of criminal responsibility if the act committed is minor and the harm caused is not great. Such acts are not deemed to be crimes.

33. One of the principal punishments, along with criminal detention, fixed-term imprisonment, life imprisonment and the death penalty, is "control" (art. 33). A person may be subject to the punishment of control for not less than three months and not more than two years (art. 38). The sentence is executed by a public security organ. The person sentenced to control must abide by certain rules during the term in which his control is being carried out (art. 39). During the period of control, the person:

(a) Must abide by laws and administrative regulations, and must submit himself to supervision;

(b) Shall not exercise the rights of freedom of speech, of the press, of assembly, of association and of demonstration without the approval of the organ executing the control;

(c) Must report on his activities pursuant to the rules of the organ executing the control;

(d) Must abide by the rules of the organ executing the control for meeting visitors;

(e) Must report and obtain approval from the organ executing the control for a change in residence and departure from the city or country.

34. Article 34 stipulates certain supplementary punishments, one of which involves the deprivation of the following political rights:

(a) The right to elect and the right to be elected;

(b) The right to freedom of speech, of the press, of assembly, of association, and of demonstration;

(c) The right to hold a position in State organs; and

(d) The right to hold a leading position in a State-owned company, enterprise, institution or people's organization (art. 54).

35. Article 56 stipulates the categories of convicted persons who may be subject to the above punishments. These are:

(a) A criminal element endangering State security;

(b) A criminal element guilty of murder, rape, etc. and who seriously undermines the social order.

36. Articles 102 to 113 are special provisions relating to crimes endangering national security. Of particular interest is article 103, which prohibits acts aiming to split the country or undermine national unification; article 105, which prohibits acts to subvert the political power of the State

and overthrow the socialist system; article 107, which prohibits institutions, organizations or individuals inside or outside the country from providing financial support for organizations or individuals in the country for the commission of the crimes stipulated in articles 102 to 105.

37. A person who illegally acquires State secrets or possesses documents, information or other articles which constitute secret or classified State information and refuses to divulge their origin and use may be sentenced to fixed-term imprisonment, criminal detention or control of not more than three years.

38. Ringleaders who gather crowds and thereby disturb the public order with serious consequences, disrupting the process of work, production, business, trading, etc., may also be liable to fixed-term imprisonment, criminal detention, control or deprivation of political rights of not more than three years' duration (art. 290).

39. Article 293, inter alia, stipulates that whoever undermines public order by creating a disturbance in a public place, causing serious disorder, may be subject to a fixed-term imprisonment, criminal detention or control of not more than five years.

40. Whoever holds an assembly, parade or demonstration without having made an application in accordance with the law or without authorization after application, or does not carry it out in accordance with the beginning time and ending time, place and route as permitted by the authorities concerned, and refuses to obey an order to disperse, thereby sabotaging the social order, may be sentenced to not more than five-years' fixed-term imprisonment, criminal detention, control or deprivation of political rights (art. 296).

41. Whoever disturbs, colludes to disturb or sabotages a legally held assembly, parade or demonstration, thereby giving rise to chaotic public order, is to be sentenced to not more than five years of fixed-term imprisonment, criminal detention, control or deprivation of political rights.

2. Appraisal of the revised Criminal Law

42. The new Criminal Law, as revised by the Chinese legislative organ, the National People's Congress (NPC), has 260 articles more than the 1979 Law. The salutary principles of clearly defined crimes and punishment (art. 3), equality before the law (art. 4) and proportionality of the punishment to the gravity of the crime (art. 5) will be realized only if the Law is applied reasonably. The following analysis demonstrates, however, that the Law may not be applied reasonably in practice.

43. The revised Criminal Law fails to define precisely the concept of "endangering national security", yet it applies the imprecisely defined concept to a broad range of offences (arts. 102-123). Article 90 of the 1979 Law stated that all acts endangering the People's Republic of China committed with the goal of overthrowing the political power of the dictatorship of the proletariat and the socialist system were crimes of counter-revolution. It listed 12 main categories of counter-revolutionary crime (arts. 90-104) including both violent and non-violent crimes. In the revised Law, even

though the nomenclature "counter-revolutionary crimes" has been abolished, the jurisdiction of the State has been allowed to expand, and acts of individuals in exercise of freedom of expression and of opinion may well be regarded as acts endangering national security. Unless the application of these crimes is restricted to clearly defined areas and in clearly defined circumstances, there is a serious risk of misuse.

44. Under the revised Law, in addition to natural persons, "institutions, organizations and individuals outside the country" (art. 107) in collusion with domestic organizations may be charged with and convicted of "endangering national security". Under the Law, the bona fide activities of persons or organisations residing or located outside China may well expose them to criminal liability. The application of the Law, in the absence of an objective, clearly demonstrable and categorical definition, is therefore likely to result in arbitrariness and wrongful detention.

45. Article 105 is yet another example of a broad and imprecise definition liable to be both misapplied and misused. The article defines the offence it covers as "organizing, scheming and acting to subvert the political power of the State and overthrow the socialist system" and "incitement to subvert the political power of the State and overthrow the socialist system by means of spreading rumours, slander or other means". The concept of "other means" is open to very broad interpretation.

46. Under Article 105, even communication of thoughts and ideas or, for that matter, opinions, without intent to commit any violent or criminal act, may be regarded as subversion. Ordinarily, an act of subversion requires more than mere communication of thoughts and ideas.

47. It may be relevant to mention that article 105 of the revised Criminal Law incorporates key elements of articles 92, 98 and 102 of the 1979 Law. Article 92 related to the subversion of the Government, article 98 referred to organizing and/or participating in a "counter-revolutionary group" and article 102 referred to counter-revolutionary propaganda and incitement.

48. The revised Criminal Law, in the context of the offences endangering national security, makes no attempt to establish standards to determine the quality of acts that might or could harm national security. That the Law establish such a standard is crucial, as that alone would make the Law reasonable, fair and just. Clearly, the national security law may be misused and, as long as it is part of the statute, it provides a rationale for restricting fundamental human rights and basic freedoms.

49. The national security provision is in some ways even broader than the "counter-revolutionary crimes" which, in name alone, have been abolished.

50. A person or organization liable for prosecution for having endangered national security may, upon conviction, be deprived of certain civil and political rights. If sentenced to "control", the freedoms of expression, of association, the press and assembly are likely to be jeopardized.

51. Mere acquisition of classified information and refusal to reveal its source or use when asked to do so may also result in deprivation of the

freedoms of speech, expression, opinion, assembly and the press. The same may result from conviction under articles 290, 293, 296 and 298.

52. It is said that the revised Criminal Law has reduced the number of offences punishable by prison terms, thereby leading to a reduction in the inmate population. This is because the punishment of "control", a measure of restriction, may now be applied to 93 offences instead of 34 as under the 1979 Law. The reduction in the inmate population may be a valid social objective, but it does not justify the imposition of "control" as a punishment under which an individual is liable to lose fundamental human rights.

53. A person who allegedly clearly undermines the social order is liable, by virtue of article 56, to be deprived of his political rights if found guilty; deprivation of political rights may be imposed as a supplementary punishment. Such a provision is again fraught with danger and is likely to be misused, thereby jeopardizing the right to freedom of opinion.

B. The reforms related to the revised Criminal Procedure Law (CPL)

1. Features of the previous situation

54. The previous situation was typified by:

(a) The minor role left to the defence, with the following features in particular: lack of access to a lawyer during detention in police custody; no presumption of innocence; access to the file possible only seven days prior to the hearing; inadmissibility of evidence produced after the closure of the investigation, especially at the hearing;

(b) A lack of balance at the hearing between the prerogatives of the procuratorate and those of the defence; witnesses for the prosecution could not be cross-examined by defence counsel, who was additionally unable to challenge procedurally most of the initiatives and decisions of the procurator;

(c) A dominant role in directing proceedings devolving on the president in his conduct of the debates during the hearing;

(d) Exorbitant powers given to the Public Security Office, such as the power to drop proceedings and close the case, or to detain a person for two months, with a one-month extension with no supervision by the machinery of justice.

2. Restoring balance to the proceedings

55. With the aim of restoring balance to the proceedings, the reform which came into force on 1 October 1997 basically concerns the following:

(a) During the investigation phase, restoring the balance of police/procuratorate relations in favour of the procuratorate

56. There are no investigating magistrates in the Chinese system. The investigation is conducted by the Public Security Office (police services),

whose powers are specifically defined by article 61 of the Criminal Procedure Law which restricts its initiative to the following situations:

(a) If the defendant is preparing to commit, is in the process of committing or has just committed an offence;

(b) If the victim or a witness recognizes the defendant as the perpetrator of an offence;

(c) If material evidence is found on him or in his home;

(d) If he attempts to commit suicide or to flee after committing his crime or if he has fled to escape the law;

(e) If it is probable that he may destroy or falsify evidence or collude with others to make false statements;

(f) If his identity is unknown and he is strongly suspected of being an itinerant criminal;

(g) If he is caught in the act of striking, violent destruction or pillaging and if he is seriously damaging or impairing work, production or public order.

57. The investigation is carried out under the supervision of the procuratorate, whose powers are reinforced as follows: henceforth the procurator has sole power to drop proceedings and close a case; the regulation known as "shelter and investigation", which was at the basis of several decisions by the Working Group which declared this type of administrative deprivation of freedom to be arbitrary, is abrogated. Article 43 of the Criminal Procedure Law provides that any public security agent who detains a person (in custody) must produce a warrant. Questioning must take place within 24 hours.

(b) Restoring the balance of magistrate/lawyer relations in favour of the lawyer

(i) During the investigation phase

58. Access by a lawyer is henceforth possible as from the first interrogation, but not immediate access to the public security case file. A restoration of balance may be observed in the adversarial principle: during the judicial investigation the lawyer may now:

(a) Have access to the file;

(b) Challenge the procurator's initiatives and decisions, in particular the dropping of proceedings and closure of the case;

(c) Request release on bail to allow the suspect to appear in court as a free individual;

(d) To submit a complaint in the event of ill-treatment;

(e) To have private interviews in the interview room with his client; however, it seems that provision has been made for de facto or de jure exceptions; for example, in the case of an attempt on national security, or particularly serious acts, these exceptions may include keeping the lawyer away from his client during the investigation.

(ii) During the hearing phase

59. The reform, which takes elements from both the inquisitorial and the adversarial systems, aims at readjusting the course of the debate in order to reinforce the adversarial principle by reducing the president's monopoly of the right to direct proceedings and by strengthening the role of the defence. The advocate is now able to present during the hearing evidence obtained after the closing of the investigation or call witnesses who had not been heard - formerly the prerogative of the procurator alone - provided that the list is submitted in advance to the procurator and to the president, who must give his consent. The lawyer may also cross-examine the witnesses for the prosecution, whereas previously recourse to cross-examination was the prerogative of the procurator alone.

III. STATUS OF PERSONS DEPRIVED OF LIBERTY

A. Reforms in the sphere of the judicial deprivation of liberty

1. Content of the reforms

(a) During the pre-sentencing phase

60. The reform concerns the following points:

(a) Henceforth, no judicial measure for the deprivation of liberty may be taken by the Public Security Office (PSO) without the authorization of the procuratorate;

(b) After the first 24 hours of detention (police custody) the Public Security Office must either release the detainee or ask the procurator for an extension of not more than three days for additional investigations;

(c) Depending on the complexity of the case, the procurator may grant a further 4-day period (making 7 days in all), which in exceptional cases (State security) may be extended to 30 days;

(d) If the procuratorate refuses the extension for lack of charges, the Public Security Office must then immediately release the detainee. If it decides to maintain the arrest (pre-trial detention) it has, as from that moment, two months to complete its investigations; this period may be extended, if the case is complex, for one month and then for a further two months;

(e) On completion of the investigation, the procurator has a period of seven days to draft his summing-up either for the release of the detainee for lack of or insufficient charges, or to refer him to the court;

(f) In addition to the release of the detainee subject to the moral security of a family member or friend, remand in bail under financial guarantee is now possible, at the request of the detainee or his advocate, in order to ensure freedom of appearance at the hearing;

(g) It may be noted that, since the recent reform, the detainee's family must be informed of the charges and of the place of detention once he has been taken into police custody; the lawyer, who previously was not allowed access to the file until seven days before the hearing, may henceforth consult it and obtain photocopies as soon as pre-trial detention begins, but not during the period of police custody preceding it.

(b) Once a sentence has become final

61. Previously, prison sentences were served either in prisons or in centres for reform through labour (and not re-education through labour, which has a purely administrative status). Since in both cases the persons concerned have been sentenced by a court, the names of the two categories have been unified as "prisons". A reduction of sentence is possible for good conduct.

2. Appraisal of the revised Criminal Procedure Law (CPL)

62. The salient features of the revised CPL are:

(a) Abolition of "shelter and investigation", permitted under the 1979 Law;

(b) Access of the accused to lawyers;

(c) Introduction of the concept of "presumption of innocence" of the accused;

(d) Introduction of an element of neutrality in court procedures;

(e) Adoption of the adversarial system of justice.

(a) Abolition of "shelter and investigation"

63. This procedure, which was introduced around 1961, seems never to have had a clear legal basis; it was abolished during the recent reform of criminal procedure. It allowed the public security organs to detain on administrative grounds, i.e. without judicial supervision, persons suspected of minor offences or of itinerant delinquency, moving from one province to another, or whose identity could not be established.

64. This form of deprivation of liberty is henceforth regulated by article 61 of the Criminal Procedure Law and carries, according to the authorities, the following guarantees.

65. It may be preceded by a simple warning. Within 24 hours of the suspect's detention, he should be informed of the grounds of his detention. The place of his detention is required to be communicated to his family, subject to certain exceptions. If after three days of detention no grounds

are established, the subject is required to be released. The PSO can, however, apply to the People's Procuratorate, the supervising agency, for extension of the period of detention by one to four days. Upon such a request being made the People's Procuratorate has seven days to decide whether or not the suspect should be arrested. Consequently, the PSO may keep a suspect under detention for a maximum period of 14 days (which may be extended exceptionally to 30 days, for example, in the case of a habitual offender committing offences in different provinces), without formally deciding to prosecute him. During the course of the period of such detention the court is not involved and has no role to play. Pre-trial proceedings are conducted by the public security bodies according to the norms established by the law concerning administrative sanctions. This means that if the public security office hands down a decision in favour of the measure, provision is made for a hierarchical remedy, to be filed with the next level of the PSO; if the measure is confirmed, provision is made for an appeal to be lodged with the people's court, which rules in accordance with the Administrative Procedures Law. This procedure is regarded by some as retaining some of the aspects of the concept of "shelter and investigation" which has been formally abolished.

(b) Access of the accused to lawyers

66. The appearance of the profession of lawyer is relatively recent (1980). This can be partly explained by the fact that as there were insufficient lawyers, they had no monopoly of defence. Article 32 of the new Criminal Procedure Law (taking over a provision of the old legislation) provides that while the function of defence devolves primarily on the lawyers, it may also be conducted by a citizen recommended by a people's organization, by the people's court or by the accused person's work unit, or by a close relative. The number of lawyers rose from 41,000 in 1990 to 82,000 in 1995 and then to 100,000 in 1997, grouped in 82,000 practices. The authorities estimate that the objective, in order to deal with the increase in access to justice and the ongoing implementation of judicial and economic reforms, should be 150,000 in the year 2000 and 300,000 in the year 2010. In fact the Chinese increasingly frequently resort to the law to settle their conflicts, as can be seen from the doubling of numbers of civil and economic lawsuits in seven years and the constant increase in administrative litigation while, with the exception of family law, conciliation is declining considerably (6.2 million cases in 1994 compared with 9 million in 1982).

67. Since 1979, the main stages of modernization of the profession have been as follows: 1980: adoption of provisional regulations for lawyers; 1988: possibility of joint practice then, subsequently, of opening secondary practices; 15 May 1996: adoption of the Law on the profession of advocate. This was when a further step was taken the future role of which should be all the more important in the promotion of the State subject to the rule of law in that the reform of criminal procedure came into force at the same time, considerably enhancing the lawyer's role. The new law authorizes lawyers to practise on a semi-private basis, as members of a liberal profession, in cooperative practices, whereas previously they were public officials, directly under State supervision. Article 13 of the new law forbids persons with the status of public officials to practise as lawyers.

68. As a consequence of the foregoing, supervision is currently ensured by the All China Lawyers Association, ACLA, which provides the federal framework for the entire profession. Membership is automatic (article 39).

69. Article 96 of the revised CPL provides that a suspect "may engage a lawyer to seek legal assistance" after the first session of interrogation by the "investigative organ" or from the day the suspect is subjected to one of the forms of detention or restriction provided by the law. During the course of the detention the lawyer may meet with the suspect, but this may be in the presence of police officers or other investigators assigned to the case. During this period of detention, the lawyer may apply to the People's Procuratorate for any relief that he may claim on behalf of the accused. He may also seek bail for the suspect.

70. Article 33, however, stipulates that the criminal suspect has the right to retain a "defender" from the time the case is transferred to the Procuratorate for review and decision on whether to prosecute. This right is available, therefore, at the end of the period of investigation. During this period, the lawyer is entitled to receive certain documentation and materials from the Procuratorate but not witnesses' testimony, which he is not entitled to receive on behalf of the accused until after the judge "accepts the case" (art. 36).

71. In the course of the trial, under the regime of the revised CPL the lawyer plays a more active role. He is entitled not only to cross-examine the prosecution witnesses but may also introduce evidence in defence on behalf of the accused.

(c) Presumption of innocence

72. A concept which was non-existent under the 1979 CPL, presumption of innocence has now been incorporated by the inclusion of article 12 in the revised CPL. It reads: "No one shall be determined guilty without a verdict according to law by a people's court".

73. Though the inclusion of this article is a step forward, it does not clearly refer to the presumption of innocence; it merely suggests that only courts have the power to determine the guilt of the accused. The issue of burden and standards of proof is not touched upon by article 12. In fact, article 35 of the revised CPL places responsibility on the defence, on the basis of the facts and the law, to present material evidence and opinions proving that the defendant is innocent, that his crime is minor, or that he should receive a mitigated punishment or be exempted from criminal responsibility.

(d) Neutrality of the trial process

74. Under the 1979 CPL, suspects were considered guilty from the time they were detained and judges assumed the role of prosecutors with verdicts arrived at in advance in important cases. In this regard, the revised CPL has made some significant changes.

75. Under the 1979 Law, the President of the court had the power to submit "all major or difficult cases" to the Adjudication Committee which supervised judicial work in each court. The Adjudication Committee would decide the case after discussion. A decision having been arrived at, the trial was in the nature of a post-decision proceeding. The revised CPL significantly changes this procedure. Now, the trial court itself decides whether or not to refer to the Adjudication Committee "difficult, complex and important cases". This procedure is only followed in cases where the trial court finds it difficult to reach a verdict. Article 149 stipulates that the court should normally reach a verdict "after hearing and deliberating on a case".

76. Secondly, under the 1979 CPL the court trying the case could refer the matter back to the Procuratorate in the middle of the trial if the court found that the evidence was insufficient or incomplete. This required the Procuratorate to make a supplementary investigation. Under the revised CPL this has been done away with. Now, supplementary investigation can be requested but only by the Procuratorate and not by the court.

77. The revised CPL fails to guarantee public trials in all cases. It allows cases involving "State secrets" to be tried in camera (art. 152). Only the verdict in such cases is announced in public.

(e) Adversarial system of justice

78. The enhanced role of lawyers under the revised CPL strengthens, in a way, the defendant's right to contest the accusation in charge. Under the revised Law, the lawyer is allowed to see the suspect when the latter is questioned for the first time, after the case is registered by the public security organ. During this time the lawyer can request bail. A similar request can also be made to the People's Procuratorate, as the matter has not reached the trial stage. However, the lawyer at this stage has no access to the written material or evidence that the Procuratorate holds.

79. After the commencement of trial, the lawyer has a definite adversarial role to play. Not only is he entitled to question the evidence of the prosecution by cross-examining the witnesses, but, independently of that right, he is entitled to introduce evidence to disprove the charge. The fact that cross-examination may be subject to the approval of the Chief Judge (art. 156) and the right to call new witnesses is at the discretion of the trial court (art. 159) does not make the procedure less adversarial.

B. Reform of the administrative procedures and administrative measures for deprivation of liberty

80. The Administrative Procedures Law, which was promulgated at the time of the events of 1989, finally only came into force in November 1990. For the time being it is probably not being used to its full potential but it is nevertheless of great importance for the future. For the first time since the People's Republic of China was established, a law of general scope allows citizens to bring suit against the administration in court. The establishment (ordinance of 1993) of a genuine statutory civil service, with recruitment by competitive examination, was established by a 1993 ordinance; its credibility

and its status have been reinforced by the evolution of administrative law. This reform movement was supplemented by the promulgation of two laws:

(a) The Administrative Penalties Law of March 1996, which, again for the first time, regulates State prerogatives in areas most frequently affecting daily life (fines, seizures, withdrawal of permits, refusals of authorizations, arbitrary bureaucracy) and administrative measures of deprivation of liability, such as re-education through labour.

(b) The State Compensation Law of 12 May 1994, adopted in implementation of article 41 of the Constitution, whereby "citizens who have suffered losses through infringement of their civic rights by any State organ or functionary have the right to compensation in accordance with the law". With regard to the arbitrary deprivation of liberty, article 3, paragraphs 5 (a) and (b) of that law provides for compensation in the following two cases: (i) illegal arrest of a citizen or the illegal application of administrative measures of restraint; (ii) illegal imprisonment of a citizen in illegal application of some other form of deprivation of liberty. In the same context, article 50 of the People's Police Law of 28 February 1995 states that: "When a police officer in the exercise of his duties violates the legitimate rights and interests of a citizen or an organization, the police shall ensure compensation in accordance with the law concerning compensation".

(i) Re-education through labour

81. This sanction, established in 1957, is administrative and not criminal, and is inflicted by decision of a specific committee (committee on re-education through labour, CRL). According to the authorities, an average of 230,000 persons have been placed under this system in 280 centres. The measure lasts for a maximum of two years with a possible extension of one year (i.e. a maximum of three years), while the average, in the centre visited by the delegation, was one year and two months. Since this measure is intended to be both preventive and educational, it only concerns the perpetrators of offences classified as minor which do not seriously disturb public order (consumption of drugs, prostitution, petty larceny, etc.).

82. The procedure is as follows. The decision is taken, on the proposal of the Public Security Office (where necessary submitted by the family or work unit), by a local administrative committee, appointed by the municipal authorities, and made up of representatives of their internal services: education, justice (2), public security (2), civil affairs (2) - a total of six members.

83. Even in China this measure is controversial, as the delegation of the Working Group observed in meetings with jurists, lawyers and academics who expressed their concern at the fact that no judge is present when the decision is taken to place a person in administrative detention, thus incurring the risk of increasing police abuses. These same persons, nevertheless feared that in the present circumstances the participation of judges might not be possible. Referring more particularly to re-education through labour, they told the delegation that, during discussions on the revision of the law, it had been suggested that this measure should be abolished, but the suggestion

had not been accepted and the measure continued in practice. As to the supervision of re-education through labour, the committee which was supposed to perform that duty met only very rarely because of its heterogeneous composition of officials from numerous agencies and the practical difficulties which that entailed, leaving the police as the only organ to implement and supervise the measure. In the circumstances, they said that a system of strict judicial supervision should be introduced for regular monitoring of the implementation of re-education through labour.

84. In view of the importance of the role played by re-education through labour, the delegation was permitted to make a full-scale visit of one of the centres. The administrative committee in charge of re-education through labour of the municipality of Shanghai was established some 40 years ago. During its conversations, the Working Group delegation learned how the committee operates.

85. There are five re-education through labour centres in Shanghai, including one for women (visited by the Group), one for drug addicts, and three others for men. Altogether, their population is 4,500. The director of the committee has been in office since 1982 when he was elected to that post. There are about 3,500 cases per year, due to rapid population growth, migration from rural areas, etc. In case of drug abuse, if it is a first offence, the person will be sent to a rehabilitation centre. In case of repeated drug abuse, he may be sent to a re-education centre. In case of repeated drug abuse, he may be sent to re-education. Twenty per cent of cases are for drug-related offences, 20 per cent for prostitution, 40 per cent for theft, and the remaining 20 per cent for offences such as hooliganism, taking liberty with women and disrupting public order.

86. The committee, which sits with the director, has seven members. The director, appointed by the mayor, leads a team of 63 permanent members distributed in 3 divisions: the division of general affairs, the Approval Division and the Review Division. Apart from the director, only six members of the CRL have dual functions. Two are jurists, while others come from the Ministries of Education, Public Security, Social Affairs, Labour, etc. The six members are all deputy directors of their respective departments and do not receive any salary for their participation in the CRL.

87. When the police hold a suspect in custody there are three possibilities of dealing with him. If the police believe he is innocent he will be released. If they believe there is enough evidence to convict him of an offence, the case will be submitted to the People's Procuratorate to proceed with the formal arrest. If the offence is minor (not criminal), the case will be submitted to the CRL.

88. The CRL does not deal with all cases, only important ones. When the police decide to commit a person to re-education through labour, they must send all the relevant material to the Approval Division, which has to examine and approve every case. When the case reaches the Approval Division the facts of the case would already have been established and the suspect would have signed the documents recognizing the facts. The Approval Division will look into the legality of the measure and the length of the period to which the suspect would be committed, and then they would meet the suspect. Only very

rarely does a case reach the CRL itself, which meets once every three months. If the Approval Division finds a case too difficult, it transmits it to the director of the CRL, who can convene the Committee for a special session. The Approval Division reports to the director once a month on its work, the number of cases it has received from the police, etc. About 10 per cent of cases transmitted by the police are rejected at that stage by the Approval Division.

89. The latter is composed of 45 independent officers who are not political appointees. Previously they were judges, lawyers, public security (police) officers or People's Procuratorate officials. They have no specific tenure, and their service may be terminated either through dismissal by the director or through resignation. In the past, they were appointed by the Government, but now they are part of the public service.

90. If a suspect does not accept the decision of the Approval Division, he can appeal to the Review Division. The purpose of the review is normally to verify the facts; it is not to decide whether the suspect is guilty or innocent of the offence imputed to him. This year (by October 1997) the CRL decided to commit over 3,000 suspects to re-education, fewer than 70 of whom, i.e., 2.3 per cent, appealed for review.

91. An appeal can be addressed to the people's court, which rules according to the Administrative Procedure Law of 1990. The court may consider the measure unfounded and order the person's release. This year, there were 15 cases of persons having challenged the decision of the Approval Division and initiated proceedings with the court. In two cases the decision was overruled by the court.

92. The police have to submit a case to the Approval Division within 15 days, and the latter has 15 days to decide; the total period of decision to commit to re-education through labour is 30 days. The average time limit between detention by the police and transfer to a re-education centre is 20 days; sometimes it may take only 10 days. The duration of the period of re-education is calculated from the day of arrest.

(ii) Comments by the Working Group on re-education through labour

93. To conclude these observations, the Working Group wishes to make the following comments.

94. During the course of the visit, the members of the Working Group delegation inquired of the authorities whether the measure of re-education through labour was applicable to persons who disturbed the public order by peacefully exercising their fundamental freedoms guaranteed by the Universal Declaration of Human Rights (such as freedom of opinion and expression, religion, etc.), and who were not prosecuted under the criminal law. The delegation was informed that the measure of re-education through labour was only applied to those who had committed minor offences under the common law and who were not required to be formally prosecuted. The Working Group strongly believes that if the measure is applied to persons who disturb the public order as indicated, the commitment of such individuals to re-education through labour would clearly be arbitrary. This conclusion, however, may not apply to common law offenders, as explained below.

95. The Working Group believes that in order to remove all doubts and misgivings, it would be appropriate to state categorically in the law that the measure of re-education through labour should not be applied to any persons exercising their fundamental freedoms as guaranteed by the Universal Declaration of Human Rights.

96. The Working Group has already addressed the question of the extent to which this form of administrative deprivation of liberty may be considered arbitrary. In its deliberation 04 (C/CN.4/1993/24) on rehabilitation through labour (see section II, B, entitled "Administrative measures") the Working Group has noted two criteria:

(a) Recourse proceedings are possible before an administrative commission, as in the case in question with the CRL, and this committee must provide safeguards equivalent to those of a court. This is not the case, particularly as the CRL are comprised of public officials.

(b) Recourse proceedings are possible before a court. This is also the case here; since re-education through labour is an administrative measure, recourse proceedings can be brought before the people's court under the Administrative Procedure Law. This possibility is a considerable step forward; but its effectiveness is very relative, as can be seen from the very small number of such proceedings; it has the particular disadvantage of the involvement of the judge a posteriori, when the facts have already been imputed and the deprivation of liberty decision taken. Vis-à-vis international standards, it would be appropriate for domestic law to provide for the intervention of the judge at the earliest possible moment, i.e., on an a priori basis.

97. The Working Group delegation has the impression that, apart from the application of re-education through labour to prosecutions in connection with the exercise of fundamental freedoms as set out in the Universal Declaration of Human Rights, this system was accepted by Chinese society, including those to whom it was applied. This was why, during the interviews in the Centre for Re-Education through Labour in Shanghai, two detainees replied to the question "When did you first see a judge?" by "Why would I see a judge? I am not a delinquent".

98. In the same context, several academics informed the delegation of their regret that a judge was inadequately involved in the decision and that further reaching reforms were needed in that regard.

99. In order to take this context in to account, the Working Group considers that re-education through labour should be decided under the a priori supervision of a judge, so as to avoid any residual suspicion of arbitrariness in the measure, while maintaining its administrative nature, especially in order to avoid the shameful effects attaching to a criminal sanction, which would appear in the criminal record. Transposed into administrative form, it could be a single-judge type simplified procedure like that set forth in chapter II, section 3, of the new Criminal Procedure Law.

IV. CONCLUSIONS

100. The visit of the Working Group to the People's Republic of China was conducted in a spirit of mutual cooperation and good will throughout the course of the visit. In most instances the exchange of views between the authorities of the People's Republic of China and the Working Group was frank and focused. The success achieved thereby reflects the increasing level of understanding of and continuing cooperation with the special procedures mechanisms of the Commission on Human Rights by the Chinese authorities.

101. The authorities approached the visit of the Working Group in a spirit of openness and understanding, enabling the Group to visit centres of detention two of which had never been visited by any similar outside agency.

102. The Working Group wishes to state that, as a result of this spirit of openness, it was possible for it to conduct all its interviews with prisoners without witnesses, in locations chosen at the last moment by the delegation, with only the United Nations interpreters present, even, in the case of Drapchi prison, with detainees who were not common-law prisoners; in China this was an unprecedented initiative.

103. The Working Group hopes that the precedent created by its visit augurs well for the continuing cooperation, which will become even more effective upon the signing and ratification by China of the International Covenant on Civil and Political Rights. The Working Group would welcome such a step.

104. The changes brought about by the Government of China in the revised Criminal Procedure Law is a step in the right direction. The increasing role of lawyers in criminal trials, enabling them to defend accused persons more effectively, is in consonance with international legal instruments. Also, the implied incorporation of the concept of the presumption of innocence in article 12 of the revised CPL has injected into the criminal law regime in China an important element signalling the direction the recent legal reforms have taken.

105. The Working Group believes that the Chinese authorities, in revising the Criminal Procedure Law, have moved from an inquisitorial system of criminal justice towards a more adversarial system which, hopefully, will contribute to the protection of human rights in China.

106. The Working Group, however, believes that much still requires to be done in terms of the criminal law. The Group notes with concern that though the Criminal Law no longer regards counter-revolutionary offences as punishable under criminal law, those offences still remain in the statute, albeit under a different nomenclature. They are now referred to as offences endangering national security, while failing to define precisely what "endangering national security" means, enabling the authorities to arrest and harass persons who may be peacefully exercising their fundamental liberties.

107. The Working Group also notes with concern that many of the offences are vague and imprecise, thereby jeopardizing the fundamental rights of those who wish to exercise their right to hold an opinion or exercise their freedoms of expression, the press, assembly and religion.

108. The Working Group believes that the absence of an independent tribunal or a judge at the time of committing a person to re-education through labour, may make the measure fall short of accepted international standards.

V. RECOMMENDATIONS

109. In the light of the above, the Working Group recommends that the Government of China takes note of the above-mentioned conclusions and further revise both the Criminal Law and the Criminal Procedure Law and, in particular:

(a) Incorporate expressly in the Criminal Procedure Law a provision stating that under the Law a person is presumed innocent until proved guilty by a court or tribunal at the end of a trial;

(b) Define the crime of "endangering national security" in precise terms, keeping in mind article 3 of the Criminal Procedure Law;

(c) Incorporate in the criminal law an exception to the effect that the law will not regard as criminal any peaceful activity in the exercise of the fundamental rights guaranteed by the Universal Declaration of Human Rights;

(d) Establish a permanent independent tribunal for or associate a judge with all proceedings under which the authorities may commit a person to re-education through labour, in order to obviate the possibility of any criticism that the present procedure is not entirely in conformity with international standards for a fair trial as reflected in international legal instruments, especially the Universal Declaration of Human Rights.

Annex

DETENTION FACILITIES VISITED BY THE WORKING GROUP

Chengdu Juvenile Reformatory Penitentiary

On 9 October 1997, the Working group visited the Chengdu Juvenile Reformatory Penitentiary established in 1978. The premises cover a surface area of 50,000 m2; there are 500 inmates and 230 staff. It is the only facility of this type for the whole of Sichnan province. Half the day's programme is devoted to work and the other half to education. The curriculum includes teaching inmates their rights and obligations, the law applicable to prisons and the Criminal Code of China. Upon entering the facility the inmates go through an initial three-month period of education. The average length of sentence for violent crimes such as homicide is three to five years. Upon inquiry the Group was informed that there were no inmates being held there for crimes endangering national security. Inmates are regularly assessed in their behaviour and, if deemed good, their sentence may be commuted or reduced. The Working Group was informed that in 1983 a school was established at the facility at the elementary and junior high school level.

Prison No. 1 (Drapchi Prison) at Lhasa, Tibet

The Group visited Drapchi on 11 October 1997. Drapchi has 968 inmates, 78 per cent of whom are of Tibetan origin. Inmates receive education and professional training to allow them to find jobs after serving their sentences. The inmates are allowed to receive members of their families once a month. The duration of each such visit is 15 to 20 minutes. Many of the inmates have their sentences reduced for good behaviour; some had been released for good behaviour in August 1997. The Group was informed that every year, on average, 25-30 per cent of the inmates receive the benefit of mitigation of sentence. The Working Group interviewed 10 inmates privately. Some of the prisoners were picked at random, some were chosen from a list of prisoners who were not common-law prisoners submitted to the authorities.

Shanghai Pre-Trial Detention Centre

On 13 October 1997, the Working Group visited the Shanghai Pre-Trial Detention Centre. This was the first time the facility was visited by a foreign delegation. Here all detainees are suspects held pending trial. During pre-trial detention, the detainees are entitled to meet their lawyers upon request and in accordance with certain procedures, requiring the presence of the authorities. No other individual is entitled to meet with the suspects. Established in July 1996, this facility is spread over an area of 33,000 m2. It holds 385 suspects, including 29 women; all persons had been formally arrested. Upon enquiry, the Working Group was informed that the detainees were categorized and held separately: adults were separated from minors, Chinese from foreigners and the sick from the healthy. Lawyers are entitled to meet with their clients. The Group chose two detainees at random and interviewed them privately.

The facility is supervised by a representative of the People's Procuratorate. The facility is also inspected annually by a representative of the National People's Congress.

Qingpu prison, Shanghai

On 14 October 1997, the Working Group visited the Qingpu Prison, Shanghai, which, though built in 1991, became operative in 1994. It has 1,800 inmates, most of whom were serving short sentences. Four inmates were chosen at random and interviewed privately.

Shanghai Women's Correction House of re-education through labour

Inmates at the centre are regarded neither as criminals nor as delinquents. Most detainees are recidivists having committed minor offences. The decision to adopt the measure of re-education through labour in respect of a particular person is taken by the Committee on Re-education through Labour. The decision of the Committee may be challenged in a court of law. Such decisions are, however, seldom challenged as in most cases the incriminating facts have been established and clarified by the time the decision may be challenged in a court of law. The decision to commit a person to a re-education centre is normally taken within one month of apprehending the person. The average duration of the period of re-education is about one year and two months. By law, the duration can last between one and three years.

The Shanghai facility was built in 1958. It has 350 inmates, all women, and a staff of about 130. The inmates enjoy all their civic rights and, upon show of good behaviour are entitled to visit their families. Upon inquiry, the Group was informed that the facility had no inmates who might have attempted to commit crimes against national security. Four detainees were picked at random and interviewed privately.